

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1472 of 1994

WITH

SPECIAL CIVIL APPLICATIONS NO.1473 & 1474 OF 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HITESH U.SHUKLA

Versus

P D VAGHELA

Appearance:

MR PK JANI for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 06/05/2004

COMMON ORAL JUDGEMENT

1. All these three petitions have been preferred under Article 226 of the Constitution of India wherein similar and identical question has been raised and therefore they are dealt with by common judgment.

2. The petitioner has challenged the action of the respondents whereby the services of the petitioner have been brought to an end by the order dated 10th January, 1994. It is averred by the learned advocate appearing for the petitioner that an assurance was given by the respondent authority in earlier Special Civil Application No. 5180 and other allied matters that the case of the petitioner will be considered sympathetically by filling in vacancies of the post of dresser. In the aforesaid earlier petitions the order was passed by the Division Bench of this Court on 16th August, 1993 and within a couple of months instead of showing sympathy towards the petitioner, there was a termination of the service of the petitioner vide order dated 10th January, 1994 and therefore the action of the respondent authorities, prima facie, is disobedience of law and is violative of the directions given by this Court in Special Civil Application No. 5180 of 1993 and other allied matters vide order dated 16th August, 1993.

3. It is contended by the learned advocate for the petitioner that the petitioner was employed by the respondent no. 1 as daily rated workmen - dresser with effect from 14th September, 1985. The petitioner served on the said post continuously, uninterruptedly and without any stigma upto 7th January, 1990 and thereafter the services of the petitioner were brought to an end against the law and in violation of the Industrial Disputes Act. Therefore, Reference u/s 10 of the I.D. Act was made on 27th June, 1990. It is also averred by the learned advocate for the petitioner that the award dated 6th March, 1993 was passed by the Labour Court, Kalol reinstating the petitioner with full back wages. The said award dated 6th March, 1993 was challenged by the respondents by filing Special Civil Application No. 5180 of 1993 and other allied petitions. The said petitions came up for hearing and the order was passed by the Division Bench of this Court on 16th August, 1993, wherein it has been observed as under :

"Having regard to the over all facts and circumstances of the case, we do not think that the Labour Court has committed an error much less an error apparent on the face of the record so as to call for our interference in exercise of

powers under Article 227 of the Constitution of India.

In due deference to the suggestion made by the Labour Court, the learned advocate appearing for the respondent workman has stated that the respondent workman is willing to give up 50% back wages awarded. He further submits that the petitioner - Panchayat should consider the case of the respondent-workman sympathetically while considering their case for being absorbed on regular basis as and when the vacancy for the post of Dresser is to be filled up.

In view of the aforesaid submission made by the learned Counsel for the respondent-workman the learned counsel for the petitioners states that the petitioners will certainly take the case of the workmen into consideration in view of long service which they have put in and in view of the concession given by them in this petition, their case will be considered with due sympathy while filling in the vacancy of the post of dresser.

It is further directed that the case of the workman concerned will be considered by the Panchayat as and when the post of Dresser is to be filled in on regular basis. It is further directed that the workman concerned will be reinstated in service latest by September 4, 1993."

3. From the aforesaid observations made by the Division Bench it is crystal clear that : (i) assurance was given by the respondent that the case of the petitioners will be considered with due sympathy while filling in the vacancy of the post of dresser and (ii) there was a direction of the Division Bench of this Court that the case of the workmen (three petitioners of the aforesaid three petition) will be considered by the respondent Panchayat as and when the post of dresser is to be filled in on regular basis.

4. On the basis of the aforesaid directions, it is vehemently contended by the learned advocate for the petitioner that instead of showing any sympathy, the respondent has terminated the services of the petitioner after reinstatement order dated 18th October, 1993 with effect from 10th January, 1994 was passed and therefore the respondent Panchayat has not only violated and disregarded the award passed by the Labour Court but also

violated the assurance and directions as referred in the aforesaid order of the Division Bench of this Court passed in Special Civil Application No.3180 of 1993 and other allied matters and therefore the order of termination of services of the petitioner deserves to be quashed.

5. Termination of services of the petitioner, at this stage, considered as overreach process of this High Court. The case of the petitioner must be considered sympathetically by the respondent Panchayat in reality as and when the post of dresser is to be filled in on regular basis.

6. Learned advocate appearing on behalf of the respondents submitted that as there was no work for the post of dresser there was no need of any employee for the said post of dresser and therefore the services of the petitioner were brought to an end. In fact, as per the award of the Labour Court, Kalol, there was an order of reinstatement. The petitioner was daily rated workman and therefore the petitioner was to be reinstated as daily rated workman. The award of the Labour Court, Kalol prohibits, not the Panchayat, to bring to an end, the services of the petitioner, if otherwise it was thought it fit by the Panchayat for any justifiable reason. There was breach of whatever nature committed by the respondent Panchayat so far as the assurance as well as so far as the directions given in the aforesaid order of the Division Bench passed in Special Civil Application No.5180 of 1993 and other allied matters are concerned. It is submitted by the learned advocate for the respondent that the case of the petitioner will be considered sympathetically as and when the question of filling in the post of dresser arises in future. It is also referred in paragraph no. 11.1 of the affidavit-in-reply filed by Deputy Director, Animal Husbandry, District Panchayat, Mehsana on 28th February, 1994, which reads as under :

"if necessary, in future, they would definitely
be considered for appointment as a Daily Wager."

7. Similarly, it is averred by the learned advocate for the respondent that in fact as on today there is no work available for the post of dresser. On the contrary, some of the posts of Dresser have been abolished, one post of Dresser is kept in abeyance and on other posts of dresser, work is so less that peon is performing the job of dresser and that too out of two peons as per the order of the Government of Gujarat, one person is to be

employed. The contention made by the learned advocate for the respondent is "non-availability of work" for the post of dresser and therefore even while terminating the services of the petitioner vide order dated 14th October, 1994 (page no. 51 to the memo of the petition), it is assured by the District Development Officer, District Panchayat, Mehsana that as and when work is available, petitioner's case will be considered sympathetically and will be given priority.

8. I have carefully gone through the facts and circumstances of the case including the order passed by the Division Bench of this Court in Special Civil Application No 3180 of 1993 and other allied matters and looking to the affidavit-in-reply filed on behalf of the respondent Panchayat, because of non-availability of work, the services of the petitioner have been brought to an end. Certain posts of dresser have been abolished by the State of Gujarat and some posts are ordered to be kept in abeyance and remaining few posts are vacant since long as referred in paragraph no. 3 of the affidavit-in-reply filed by the Deputy Director of Animal Husbandry, District Panchayat, Mehsana on 15th February, 1996.

9. Golden thread running throughout in the conventions of the learned advocate for the respondent Panchayat and in the affidavit-in-reply filed on behalf of the respondent - Panchayat, is non-availability of work and the assurance was given in the affidavit-in-reply as well as in the order of termination that as and when the work is available, the case of the petitioner will be considered sympathetically and they will be given priority.

10. In view of these facts, I direct the respondents to consider the case of the petitioner sympathetically as assured by the respondents - authorities while terminating the petitioner's services, priority will be given to the petitioner as and when the work is available and the post of dresser is to be filled in. These directions are nothing but to reiterate what is stated in the order dated 16th August, 1993 passed by the Division Bench of this Court in Special Civil Application NO.3180 of 1993 and other allied matters. The order of termination passed by the respondents is not illegal or violative of any existing law. Therefore, all these petitions fails and the same stands disposed of with the aforesaid directions. Rule is discharged with no order as to costs, in all the petitions.

(D.N. Patel, J.)

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